

Department of Planning, Building and Code Enforcement
1 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 7/28/04 Item: 3.f.

File Number
CP03-068

Application Type
Conditional Use Permit

Council District
10

Planning Area
South

Assessor's Parcel Number(s)
462-15-013

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: northeast corner of Guadalupe Parkway and Capitol Expressway

Gross Acreage: 2.3

Net Acreage: 2.3

Net Density: N/A

Existing Zoning: A Agriculture

Existing Use: VTA parking lot

Proposed Zoning: A Agriculture

Proposed Use: 60-foot monopole within VTA public parking lot for wireless communications antennas & 240 square foot enclosure for associated equipment

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
Industrial Park

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Mobile home park

R-MH Residential Mobile Home

East: Day Care Center / Industrial

A Agriculture

South: Parking lot

A Agriculture

West: Guadalupe Parkway (Hwy 87) and commercial past Hwy 87

A(PD) Planned Development

Completed by: FLB

Environmental Impact Report found complete
Negative Declaration circulated on _____
Negative Declaration adopted on _____

☒ Exempt
☐ Environmental Review Incomplete

 PUBLIC AGENCY COMMENTS RECEIVED

Completed by: FLB

Department of Public Works

Public Works relayed no comments. Their memorandum is attached.

 Other Departments and Agencies

 Fire Department

 GENERAL CORRESPONDENCE

None received.

 ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On November 14, 2003, the applicant, Cingular Wireless, submitted a Conditional Use Permit application requesting to install a 60-foot tall, freestanding monopole and a 228 square-foot ancillary equipment shelter on a 2.3 gross acre site in the A Agriculture Zoning District. The site is located at the northeast corner of Guadalupe Parkway (Hwy 87) and Capitol Expressway, and the site is currently developed as a Valley Transportation Authority park-and-ride surface parking lot. Pursuant to Table 20-30 of the San José Municipal Code, issuance of a Conditional Use Permit is required for the installation of a wireless communication antenna in the A Agriculture Zoning District.

The proposed monopole has a diameter of 20 inches, and Cingular proposes to install six panel antennas in the upper six feet of the monopole. The base of the monopole is surrounded by a fence enclosure measuring 9 feet 6 inches by 24 feet. Associated equipment cabinets and electrical panels would occupy the remainder of the enclosure area.

The subject site is flat and generally triangular in shape. The location of the proposed monopole is on the far west side of the property (adjacent to Hwy 87) and is located approximately 130 feet north of Capitol Expressway. Surrounding uses include a mobile home park to the north, Hwy 87 and single-story commercial across Hwy 87 to the west, a surface parking lot across Capitol Expressway to the south, and an industrial use and day care center across Narvaez Ave. to the east.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project is consistent with this section in that the project involves the leasing of a portion of the site for a minor alteration to install a 60-foot monopole and ancillary equipment which involves no expansion of the existing parking lot use.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park in that wireless communication antennas are considered to be in conformance with General Plan Policies provided that the proposal conforms to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities. The aforementioned policy indicates that wireless communication antennas are appropriate in Industrial Park designated lands.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the following: (1) the City of San José Zoning Ordinance, and (2) City Council Policy 6-20 for Wireless Communication Facilities.

Conformance to the Zoning Ordinance

Table 20-40 of the Zoning Ordinance lists the setbacks for all structures within the A Agricultural Zoning District. The Table calls for a minimum setback of 300 feet from abutting property zoned or used for residential purposes. The nearest residential property is a mobile home park across Narvaez Ave. to the northeast of the subject area, and this residential parcel is located more than 300 feet from the proposed monopole location. The Table also calls for minimum setbacks of 50 feet from abutting streets and highways and 50 feet from abutting property used or zoned for other than residential purposes. The location of the proposed monopole is over 120 feet from the nearest property line to the south and is over 240 feet from the nearest property lines to the north and east. While the proposed monopole location does not meet the required setbacks from the western property line, the proposed monopole would be located more than 50 feet from the nearest roadway, which is the Hwy 87 off-ramp.

Given the irregular shape of the lot, adherence to the 50-foot setback from the abutting Hwy. 87 off-ramp, would place the monopole and associated equipment in the middle of the existing parking lot, resulting in a

Section 20.80.1900 of the Municipal Code regulates height of wireless communication antennas. Section 20.80.1900 (A) states that “the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty (60) feet provided that the design of the antenna is a ‘slim’ pole design.” The proposed monopole and associated antenna design is considered a “slim” pole design because it has a diameter of 20 inches. Therefore, the proposed maximum height of 60 feet does conform with the maximum height limitation specified in the Zoning Ordinance.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities

General Plan Conformance

The proposed monopole complies with the intent of the City Council Policy (attached). The policy states that:

Wireless communication antennas which are either freestanding or attached to buildings are discouraged from all residential designations, except Residential Support for the Core, High-Density Residential or Transit Corridor Residential which provide for the integration of commercial and residential uses in an urban setting. Antennas located on residentially designated properties solely developed with nonresidential uses such as parks, schools, public utilities, and churches may be acceptable subject to review in accordance with the City’s Zoning Ordinance.

The monopole will be located on an area designated Industrial Park on the General Plan Land Use/Transportation Diagram. Therefore, it conforms with the Policy with respect to the General Plan Designation where the monopole is proposed. Furthermore, the site is owned by the Valley Transportation Authority and is developed as a park-and-ride lot. Given the ownership and the current use, staff does not anticipate that the site will be redeveloped with new uses, therefore, approval of this CUP would not be expected to have an impact on the future redevelopment of the area. In addition, staff feels that the proposed monopole is compatible with the existing use of the site adjacent to Hwy 87. To ensure conformance with future General Plan and Council Policy revisions, a five-year time condition would be included as part of the Conditional Use Permit approval.

Alternatives Analysis

The applicants explored various alternatives to the proposed monopole, and a summary of some of these

Visual Impacts

In conformance with the policy, the proposed monopole is a “stealth” design, incorporating the proposed antennas into a radome with the same diameter as the pole. Adjacent to the site, the Hwy 87 overpass (over Capitol Expressway) is elevated approximately 20 feet above the subject grade, effectively screening the lower portion of the monopole from view from the west. Similarly, the lower portion of the monopole will be screened when looking from the north, south, and east by existing trees that are established at the site. To aid in screening of the equipment enclosure, Staff is recommending a condition that would require the applicant to plant new landscaping around the perimeter of the chain link fence enclosure. The applicant has indicated that they are amenable to this condition. While chain link fencing is not typically supported by Staff, staff is supportive in this instance because of the presence of the existing chain link fencing adjacent to the enclosure and due to the enhanced landscaping that will aid in the screening of the fence.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The portion of the subject site where the monopole and associated equipment enclosure is proposed has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A Agriculture Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project is consistent with this section in that the project involves the leasing of a portion of the site for a minor alteration to install a 60-foot monopole and ancillary equipment which involves no expansion of the existing parking lot use.
4. The project proposes to install a 60 foot tall, freestanding monopole and a 228 square-foot ancillary equipment shelter on a 2.3 gross acre site. The proposed monopole is circular with a diameter of 20 inches, and Cingular proposes to install six panel antennas in the upper six feet of the monopole. The

8. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application, and with the exception of meeting the one setback for the A Agriculture Zoning District, this proposal conforms with all aspects of the Policy. A Development Variance would remedy the Zoning Code setback conformance issue, and a Development Variance approval is required before this CUP can take effect.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance, with the exception of meeting the setbacks for the A Agriculture Zoning District. A Development Variance would remedy the Zoning Code setback conformance issue, and a Development Variance approval is required before this CUP can take effect.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities, in that the applicant has provided wireless antennas that are in conformance with the Zoning Ordinance (with the above noted exception) and are of a stealth design.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise

upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Development Variance.** Prior to the issuance of Building Permits and prior to the implementation of the development proposed with this Conditional Use Permit, the applicant shall obtain approval of a Development Variance subject to the discretion of the Director of Planning, Building, and Code Enforcement. Should no Development Variance be granted, the applicant would need to Amend this approval to relocate the proposed antenna.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José -Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José -Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on

3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
7. **Landscaping.** Within 60 days of approval of this permit, the applicant shall submit a Permit Adjustment that includes plans for the installation of new landscaping to screen the proposed fencing and ancillary equipment. Plans should show conceptual details of an automatic irrigation system that services the new landscaping. Approval of the proposed landscaping and automatic irrigation system shall be subject to the discretion of the Director of Planning, Building, and Code Enforcement.
8. **Generator.** No electrical power generation facilities or equipment are approved with this permit. Installation of any electrical power generation equipment would require separate approval of a Conditional Use Permit or Administrative Permit, subject to the discretion of the Director of Planning, Building, and Code Enforcement.
9. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
10. **Colors and Materials.** All colors and materials are to be as specified on the approved plan set. The monopole itself is to be painted a light color (either white or light blue) so as to help the top, more visible portion of the pole, blend with the sky.
11. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-068, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check

to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

13. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
14. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit. Co-location of new providers can be accomplished through issuance of a Permit Adjustment approved by the Director of Planning, Building, and Code Enforcement, as long as the antennas are located within the existing pole or one of the same or smaller dimensions. No expansion of the pole or exterior mounting of antennas is permitted without the approval of a Conditional Use Permit Amendment.
15. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use, or the permit has expired.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of

3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this conditional use permit has been granted for a period of five (5) years only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c: Leah Hernikl, Ruth and Going, Inc., 2216 The Alameda, Santa Clara, CA 95050

FLB